IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.754 OF 2005

Shri Dharma Narayan Dingore .. Appellant

Versus

Shri Vasant Deu Kharik .. Respondent

Mr.A.R.Pitale for appellant

CORAM : P.V.KAKADE, J.

DATE : 8TH AUGUST, 2005.

P.C.:

1. The present appeal is filed against the judgment and order passed by the Addl. District Judge, Kalyan dated 2.8.2004 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, Shahapur dismissing the suit of the plaintiff for possession for encroached portion of his plot No.17.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The plaintiff had filed the suit for possession of the property on the allegation that the defendant had made encroachment over his land by making construction. It was alleged by the plaintiff that the defendant was allowed to construct his flour mill, besides one room adjacent to it for his residence and also started one hotel by the side of the said flour mill. It was further alleged that though the defendant exceeded the permission given to him, the plaintiff did not object him for doing so. Thereafter, in May 1986, when the plaintiff was out of Station, the defendant taken undue advantage and constructed chawl admeasuring 130 x 10 ft in length and width respectively. That chawl was having Gotheghar Grampanchayat House No.213 and that encroachment was on the suit plot belonging to the plaintiff, and hence the suit for removal of encroachment and possession of the encroached portion of the land came to be filed. The defendant contested the suit, inter alia, denying the allegations and submitting that the structure belonged to the defendant was not on the land of the plaintiff. He also denied that he had exceeded his permission and constructed a room for his residential, tea stall and flour mill etc. It was the defendant’s case that disputed chawl was measured by

T.I.L.R., who was appointed as Court Commissioner in R.C.Suit No.9 of 1987 and in the said Court Commissioner's Report it was found that the construction of chawl was not even touching the property of the plaintiff and hence the suit was sought to be dismissed.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had proved his exclusive ownership and possession of his plot No.17. However, the plaintiff had failed to prove that the defendant had made encroachment upon the suit property to the extent of 4 Are land and illegally constructed chawl bearing Grampanchayat House No.213 and as such the suit came to be dismissed. The appeal was carried to the District Court. The learned Addl. District Judge after hearing both the parties came to the conclusion that the learned trial judge had recorded the findings correctly on the basis of available evidence and dismissed the appeal. Hence the present appeal.

4. At the outset, it must be noted that there is absolutely no substantial question of law involved in this appeal. Both the courts below have appreciated the

factual aspect of the evidence correctly. The trial court has discussed the evidence of two maps available for the purpose of appreciation i.e. Map Exhs. 65 and 68. Both of the maps were prepared on the same day i.e. 23.3.1987, however, one map showed that there was construction on the property belonging to the plaintiff, however, the second map was conspicuous by silence over factum of construction on the plaintiff's property. In view of this position, the lower appellate court has come to the conclusion that the plaintiff has not conclusively proved that the defendant had made any encroachment over his property and as such the issues were answered accordingly.

5. Time and again the apex court has held that when there are concurrent findings recorded by both the courts below and those are found to be reasonably based upon the available evidence, then the High Court in second appeal under Section 100 of C.P.C. could not be justified in interfering in the said findings. Moreover, it is to be noted that the available evidence shows that the view taken by both the courts below is reasonable on the basis of such evidence, and therefore, it need not be interfered with.

. In the result the appeal stands dismissed. Consequently Civil Application No.1271 of 2005 also stands dismissed.